

S. 4418

A. 6429

2013-2014 Regular Sessions

S E N A T E - A S S E M B L Y

March 27, 2013

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments

AN ACT establishing the town of Southampton old filed map substandard road zone

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Establishment of the town of Southampton old filed map
2 substandard road zone. 1. Upon petitions as hereinafter provided, the
3 town board of Southampton may establish an old filed map substandard
4 road zone located within (a) an old filed map overlay district or (b)
5 special old filed map overlay district designated by the town board of
6 the town of Southampton pursuant to article 16 of the town law prior to
7 January 1, 2005, where such establishment is necessary to address public
8 health and safety concerns.
9 2. Whenever petitions are presented to the town board pursuant to this
10 act, for the establishment of an old filed map substandard road zone the
11 board shall adopt an order and enter the same in the minutes of its
12 proceedings, reciting in general terms the filing of such petitions, the
13 boundaries of the proposed zone, the improvements proposed, the maximum
14 amount proposed to be expended for the improvement as stated in the
15 petitions and the cost of the zone to the typical property and, if
16 different, the typical one or two family home and specifying the time
17 when and place where said board will meet to consider the petitions and
18 to hear all persons interested in the subject thereof, concerning the
19 same. The board shall cause a copy of such order, certified by the town
20 clerk, to be published at least once in the official paper, the first
21 publication thereof to be not less than ten nor more than twenty days

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD08901-01-3

before the day set therein for the hearing as aforesaid, and shall also cause a copy thereof to be posted on the sign-board of the town maintained pursuant to subdivision 6 of section 30 of the town law, not less than ten nor more than twenty days before the day designated for the hearing as aforesaid. Prior to the publication of a copy of the order, the board shall cause to be prepared, and file for public inspection with the town clerk, a detailed explanation of how the estimated cost of the zone to the typical property and, if different, the typical one or two family home was computed.

3. The expense of the establishment of the old filed map substandard road zone and providing improvements therefor, shall be assessed, levied and collected from the several lots and parcels of land within the town of Southampton for each purpose in the same manner and at the same time as other town charges, except as otherwise provided by law.

(a) Any costs associated with the establishment of the zone, including the cost of any services or improvements thereon, incurred within the first two years of the existence of the zone shall be paid for by the owners of taxable real property that is located within the zone. If only a portion of a parcel is situated within the zone, the town board shall determine the proportion of the costs to be borne by the owner of such parcel.

(b) All costs associated with the establishment of the zone, including the cost of any services or improvements thereon, incurred after the first two years of the existence of the zone shall be paid for by all of the owners of taxable real property of the town. If only a portion of a parcel is situated within the town, the town board shall determine the proportion of the costs to be borne by the owner of such parcel.

4. Upon petitions, as hereinafter provided, the town board may dissolve and discontinue the old filed map substandard road zone provided that there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of such zone. Such petition shall be signed by resident owners of taxable real property aggregating at least one-half of all the taxable real property of the town owned by resident owners according to the latest completed assessment roll of the town, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner provided by the election law for the authentication of nominating petitions. When any such petition containing the required signatures shall have been presented, the town board shall adopt an order and enter the same in the minutes of its proceedings, reciting in general terms the filing of the petition, and specifying the purpose thereof, the name and boundaries of the zone and the time when and place where said board will meet to consider the petition and to hear all persons interested in the subject thereof concerning the same. If the petition shall propose that the area of the zone be diminished, the order shall also describe the portion of the zone to be eliminated. The board shall cause a copy of such order, certified by the town clerk, to be published at least once in the official paper, the first publication thereof to be not less than ten nor more than twenty days before the day set therein for the hearing as aforesaid, and shall cause a copy thereof to be posted on the sign-board of the town maintained pursuant to subdivision 6 of section 30 of the town law not less than ten nor more than twenty days before the day designated for the hearing as aforesaid. If the town board shall determine, after such hearing and upon the evidence given at such hearing, that it is in the public interest to dissolve the zone or to diminish the area thereof, the town board shall adopt an order accordingly dissolving the zone or

diminishing its area. If there are any contracts to accomplish the purpose of such zone in force and effect, the town board shall not dissolve such zone, nor diminish the area thereof, prior to the expiration of such contracts.

5. Two petitions shall be required for the establishment of the old filed map substandard road zone. One petition shall be signed by the owners of taxable real property situate in the town of Southampton, owning in the aggregate at least one-half of the assessed valuation of all the taxable real property of such town, as shown upon the latest completed assessment roll of said town; the second petition shall be signed by the owners of taxable real property situate in the town of Southampton, owning in the aggregate at least one-half of the assessed valuation of all the taxable real property of the proposed zone, as shown upon the latest completed assessment roll of said town; provided, however, that if there be any resident owners, the petition shall include the signatures of resident owners owning taxable real property aggregating at least one-half of the assessed valuation of all the taxable real property of the town owned by resident owners, according to the latest completed assessment roll. If only a portion of a parcel of such real estate appearing upon the assessment roll is situate within the town or zone thereof, then the town board may determine the relative value of the part thereof within the town or zone based upon the valuation of the entire parcel as the same appears upon the assessment roll. Such petitions shall describe the boundaries of the proposed zone in a manner sufficient to identify the lands included therein as in a deed of conveyance, and shall be signed by the petitioners, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner provided by the election law for the authentication of nominating petitions. If such petitions shall request the construction or acquisition of an improvement, they shall state the maximum amount proposed to be expended therefor. If the petitions shall not request the construction or acquisition of an improvement but shall propose the performance or supplying of certain services, they may state the maximum amount to be expended annually for such services.

S 2. For purposes of this act, the following terms shall have the following meanings:

1. the term "typical property" shall mean a benefited property having an assessed value that approximates the assessed value of the mode of the benefited properties situated in the zone or town of Southampton that will be required to finance the cost of the proposed improvements;

2. the term "typical one or two family home" shall mean a benefited property improved by a one or two family dwelling and having an assessed value that approximates the assessed value of the mode of the benefited properties improved by one or two family dwellings situated in the zone or town of Southampton that will be required to finance the cost of the proposed improvements;

3. the terms "cost of the zone to the typical property" and "cost of the zone to the typical one or two family home" shall mean the amount that it is estimated that the owner of such a typical property or home within the zone or town of Southampton will be required to pay for debt service, operation and maintenance and other charges for at least the first five years of existence of the zone; and

4. the term "mode" shall mean, in connection with assessed value of property, the most frequently occurring assessed value as shown on the latest completed final assessment roll.

1 S 3. 1. After a hearing held upon notice as hereinbefore provided and
2 upon the evidence given thereat, the town board shall determine by
3 resolution: (a) whether the petitions are signed, and acknowledged or
4 proved, or authenticated, as required by law and are otherwise suffi-
5 cient; (b) whether all the property and property owners within the
6 proposed zone are benefited thereby; (c) whether all the property and
7 property owners benefited are included within the limits of the proposed
8 zone; and (d) whether it is in the public interest to grant in whole or
9 in part the relief sought.

10 2. (a) If the town board shall determine that the petitions are not
11 signed, and acknowledged or proved, or authenticated, as required by law
12 or that they are otherwise insufficient, or if it is determined that it
13 is not in the public interest to grant in whole or in part the relief
14 sought, the town board shall deny the petitions.

15 (b) If the town board shall determine that the petitions are signed,
16 and acknowledged or proved, or authenticated, as required by law and are
17 otherwise sufficient and that it is in the public interest to grant the
18 relief sought, either in whole or in part, but shall find that any part
19 or portion of the property or property owners within the proposed zone
20 are not benefited thereby or that certain property or property owners
21 benefited thereby have not been included therein, the town board shall
22 specify the necessary changes of the boundaries of the proposed zone to
23 be made in order that all of the property and property owners and only
24 such property and property owners as are benefited shall be included
25 within such proposed zone, and the board shall call a further hearing at
26 a definite place and time not less than fifteen nor more than twenty-
27 five days after such determination. Notice of such further hearing shall
28 be posted and published in the manner provided in section 193 of the
29 town law except that such notice shall also specify the manner in which
30 it is proposed to alter the boundaries of the proposed zone. Such
31 further hearing shall be conducted in the same manner as an original
32 hearing upon a petition. If and when the town board shall determine in
33 the affirmative all of the questions set forth in subdivision one of
34 this section, the board may adopt a resolution approving the establish-
35 ment of the zone as the boundaries shall be finally determined and the
36 construction of the improvement or providing of the service therein, but
37 no such resolution so approving shall be adopted unless the petitions
38 shall comply with the requirements of section 191 of the town law as to
39 sufficiency of signers as the boundaries of the proposed zone shall be
40 finally determined.

41 3. (a) Within ten days after the adoption of a resolution by a town
42 board approving the establishment of the zone and the construction of an
43 improvement or the providing of a service therein, the town clerk of the
44 town shall file a certified copy of such resolution, in duplicate, in
45 the office of the state department of audit and control at Albany, New
46 York, together with an application, in duplicate, for permission to
47 create such zone. Such application shall be executed and verified by the
48 supervisor, or such other officer of the town as the town board shall
49 determine, and shall include the following:

50 (1) A certified copy of the petitions (omitting, however, the signa-
51 tures, and acknowledgments or proofs, or authentications);

52 (2) An itemized statement of the then outstanding indebtedness of the
53 town for all purposes, as evidenced by bonds, bond anticipation notes,
54 capital notes and budget notes; the amount of joint indebtedness
55 contracted or incurred for a joint service or a joint water, sewage or
56 drainage project and the amount of such indebtedness allocated and

1 apportioned to the town, as defined in title 1-A of article 2 of the
2 local finance law; the amount of the indebtedness proposed to be
3 contracted for the improvement; the amount of budgetary appropriations
4 for the payment of any such indebtedness, whether or not such appropri-
5 ations have been realized as cash, and the amounts, purposes and proba-
6 ble dates of issuance of any bonds, bond anticipation notes, capital
7 notes and budget notes which the town has authorized to be issued but
8 which in fact have not been issued on the date of such application;

9 (3) A statement of the aggregate assessed valuation of the real prop-
10 erty situated in the proposed zone thereof, as such assessed valuations
11 are shown on the last completed assessment roll of the town prior to the
12 date of such application;

13 (4) A statement of the average full valuation of the taxable real
14 property of the town. Such average full valuation shall be determined in
15 accordance with the provisions of the first paragraph of paragraph 7-a
16 of section 2.00 of the local finance law; and

17 (5) A statement as to the manner in which it is proposed to finance
18 the cost of the improvement.

19 (b) Whenever such an application shall be filed in the office of the
20 department of audit and control, the state comptroller shall within five
21 days thereafter give notice thereof to the board of supervisors of the
22 county in which such proposed zone is located by filing with the clerk
23 of such board of supervisors one copy of such application. At any time
24 within fifteen days of the filing of the application, the board of
25 supervisors may file an objection, in writing, in the office of the
26 department of audit and control. In addition, the state comptroller
27 shall determine whether the public interest will be served by the
28 creation of the zone and also whether the cost thereof will be an undue
29 burden upon the property of the proposed zone. The state comptroller may
30 make such determinations upon the original or any amended application,
31 or in his or her discretion may require the submission of additional
32 information or data in such form and detail as he or she shall deem
33 sufficient, or may cause an investigation to be made, to aid him or her
34 in making the determinations above mentioned.

35 4. Upon the expiration of fifteen days from the date of the filing of
36 such application with the clerk of the board of supervisors and upon
37 reaching a determination, the state comptroller shall make an order, in
38 duplicate, granting or denying permission for the creation of the zone
39 and shall file one copy of such order in the office of the state depart-
40 ment of audit and control at Albany, New York, and the other in the
41 office of the town clerk of the town in which the proposed zone is
42 located. The town clerk shall present such order to the town board of
43 the town at the next meeting thereof.

44 5. If the state comptroller shall deny permission for the creation of
45 the zone, the town board shall forthwith adopt an order denying the
46 petitions. If the state comptroller shall grant permission therefor, the
47 town board may adopt an order establishing the zone as the boundaries
48 shall be finally determined.

49 6. Except as otherwise provided by section 202-b of the town law, the
50 permission of the state comptroller shall not be required for the estab-
51 lishment of a zone and the construction of an improvement or the provid-
52 ing of a service therein, including an increase in the maximum amount
53 proposed to be expended for the improvement in a zone, unless it is
54 proposed or required that the town in which such zone is located shall
55 finance the cost thereof by the issuance of the bonds, notes, certifi-
56 cates or other evidences of indebtedness of the town therefore or it is

1 proposed that debt service on obligations issued to finance the costs of
2 facilities acquired be assumed, pursuant to section 198 of the town law,
3 and, if the state comptroller shall have computed average estimated
4 costs for similar types of zones, the cost of the zone to the typical
5 property or, if different, the costs of the zone to the typical one or
6 two family home, as stated in the notice of hearing, is above the aver-
7 age estimated cost to typical properties or homes for the establishment
8 of similar types of zones as may be annually computed by the state comp-
9 troller. The state comptroller annually shall provide to towns notice of
10 the average cost thresholds as may be computed in accordance with this
11 section.

12 S 4. Upon the adoption of a resolution, the town board of any town may
13 enter into such contracts, as it may deem necessary, with any person,
14 corporation or association for the purpose of ensuring that the cost of
15 any old filed map substandard road zone will not constitute an undue
16 burden upon the property within such zone and may require the filing of
17 a surety bond or bonds or the deposit of cash or securities with the
18 town board to ensure the performance of such contracts.

19 S 5. 1. The town clerk shall cause a certified copy of the determi-
20 nation or order of the town board adopted pursuant to the provisions of
21 this act, establishing, extending, dissolving or diminishing any zone,
22 to be duly recorded in the office of the clerk of the county in which
23 the town is located, within ten days after the adoption of such order or
24 determination by the town board, and when so recorded such determination
25 or order shall be presumptive evidence of the regularity of the
26 proceedings for the establishment, extension, dissolution or diminution
27 of such zone. Within ten days after the adoption of a determination or
28 order by the town board establishing, extending, dissolving or diminish-
29 ing a zone, the town clerk shall cause a certified copy thereof to be
30 filed in the office of the state department of audit and control at
31 Albany, New York.

32 2. Any interested person aggrieved by any final determination or order
33 made pursuant to the provisions of this act may review the same by
34 certiorari provided that the application for such order of certiorari is
35 made within thirty days from the date of the recording of the certified
36 copy of the order or determination in the office of the clerk of the
37 county. The said determination or order shall be final and conclusive
38 unless application has been made for review by certiorari within thirty
39 days from the time of recording thereof. No review shall be had unless
40 at the time of the application for a certiorari order the interested
41 person seeking the review shall give an undertaking approved by the
42 supreme court, or a justice thereof, as to form, amount and sufficiency
43 sureties, that, in the event of failure to modify said final determi-
44 nation or order he, she or they will pay to the town board, all such
45 costs and expenses as are incurred by it on account of the said certior-
46 ari proceedings, as shall be determined by the court. In the event that
47 upon such review there shall be any modification by the court of said
48 final determination or order the court shall direct the modification
49 thereof by order which shall be final and conclusive and such town board
50 shall cause such order to be recorded and filed in the same places and
51 manner as was the determination or order appealed from.

52 S 6. If the town board shall upon the petitions determine to grant the
53 relief sought by the petitioners and establish a zone either in whole or
54 in part, or if the town board shall determine to establish a zone on its
55 own motion without petitions but after a public hearing and subject to a
56 permissive referendum as provided in article 12-A of the town law, the

1 town board shall, after such determination becomes effective, require
2 the town engineer, or an engineer employed for that purpose, to prepare
3 definite plans and specifications for the improvement, a careful esti-
4 mate of the expense, and, with the assistance of the town attorney, or
5 an attorney employed for that purpose, a proposed contract or contracts
6 for the execution of the work, and to file the same with the town clerk
7 within a time to be prescribed by the said town board. Thereupon the
8 said board shall examine such definite plans, specifications, estimates
9 and the proposed contract or contracts, and may make such modifications
10 and changes in the plans, specifications, estimates and contract or
11 contracts as to the board shall seem expedient, and thereupon the board
12 may adopt or reject the same. If the estimated expense of the improve-
13 ment does not exceed the amount specified for public work in subdivision
14 1 of section 103 of the general municipal law, the board may adopt such
15 plans and specifications and cause said improvement to be made or may
16 enter into a contract or contracts therefor without giving public notice
17 thereof. If the estimated expense exceeds such amount, upon adopting
18 the plans and specifications, the board shall invite sealed proposals
19 for furnishing the material and labor necessary by the publication of a
20 notice at least once in the official paper and in such other newspaper
21 as to the board may seem expedient, requiring all persons who shall
22 offer to do said work to file a sealed proposal or offer to do the work,
23 and with it a certified check for a sum equal to five per centum of the
24 estimated expense of the improvement, payable to the order of the super-
25 visor, or a bond with sufficient sureties, to be approved by the super-
26 visor, in a penal sum equal to five per centum of the estimated expense
27 of the improvement, conditioned that if his or her proposal is accepted
28 he or she will enter into a contract for the same, and that he or she
29 will execute such further security as may be required for the faithful
30 performance of the contract. If a person or corporation making such
31 proposal shall fail to enter into a contract pursuant to the require-
32 ments of the board, or shall fail to give the further security which may
33 be prescribed in said notice, within the time to be limited therein,
34 then the check deposited as aforesaid and the moneys standing to the
35 credit of the same shall be forfeited to the town as liquidated damages
36 and not as a penalty, and the supervisor shall collect the same or
37 enforce the payment of the bond for the benefit of the town. The notices
38 inviting sealed proposals shall specify a time when and place where they
39 will be received and considered and they shall be received and consid-
40 ered publicly at such time and place. There shall be at least ten and
41 not more than thirty days between the first publication of the notice
42 and the time when the proposals will be received, and during that time
43 the plans and specifications for the work shall be exhibited publicly in
44 the office of the town clerk. It shall be the duty of the town clerk to
45 provide that all persons desiring to examine the same shall have reason-
46 able opportunity to do so, and that there shall be no discrimination in
47 favor of any person or persons in the opportunity to make proper exam-
48 ination of said plans and specifications. The town board may award one
49 contract for the entire work or separate contracts for portions thereof.
50 The board shall determine the lowest responsible bidder or bidders whose
51 bid and check or bond shall have been made and filed in conformity with
52 this section and with the notice published by the board as aforesaid,
53 and the contract or contracts shall be awarded to the lowest responsible
54 formal bidder therefor, unless in the judgment of the board it shall be
55 in the interests of the town to reject all bids and to advertise anew.
56 In that event, the board shall proceed accordingly. In no event shall

any contract be awarded if the total expense of the improvement shall exceed the maximum amount stated in the petitions or in the final order, if the town board proceeded under article 12-A of the town law. Nothing in this section shall be construed to prevent the town from performing any such work or part thereof by or through its regular employees and the cost thereof shall be considered as part of the expense of the improvement.

S 7. 1. The expense of any public improvement made under authority of article 12 of the town law shall include the amount of all contracts, the costs of all lands and interests therein necessarily acquired including the total payments of principal remaining on obligations assumed pursuant to paragraph (b) of subdivision 12 of section 198 of the town law, the costs of erection of necessary buildings for operation or administration of the improvement, printing, publishing, interest on loans, legal and engineering services and all other expenses incurred or occasioned by reason of the improvement or project. The town board, upon the submission of a verified statement of the cost of preparation of the map and plan accompanying the petitions for the establishment of a zone, and upon the submission of a verified statement of the cost to petitioners for legal services rendered in a proceeding for establishment of the zone, may refund to the petitioners the reasonable cost thereof and include the amount or amounts refunded as a part of the cost of the improvement. In addition, the town board may apportion against and charge to the cost of making any improvement an allowance for any services rendered by the town attorney, town engineer or any salaried town employee, when such services have been necessary to or occasioned by reason of the making of the particular improvement.

2. Except as provided in section 204 of the town law, in all zones in which assessments have heretofore been levied upon an ad valorem basis, assessments shall hereafter be levied upon the same basis. In all zones in which assessments have heretofore been levied upon a benefit basis, assessments shall hereafter be levied upon the same basis.

S 8. After the zone is constructed and completed, it shall be maintained by the town board and the expense of such maintenance shall be a charge upon the owners of taxable real property in the zone or in the town, as the case may be pursuant to subdivision three of section one of this act.

1. If the expense of such improvement is required by subdivision three of section one of this act to be assessed, levied and collected from the several lots and parcels of land in the same manner and at the same time as other town charges, the expense of maintenance of such zone shall be assessed, levied and collected in like manner.

2. The town board shall annually prepare detailed estimates in writing of the anticipated revenues and expenditures for such zone for the purpose of determining the amount of money required to meet the expense of maintaining the zone for the fiscal year commencing on the first of January next succeeding. Such estimate may contain for contingent purposes, an amount not to exceed ten per centum of the amount estimated as necessary to meet the expense of maintaining the zone exclusive of the amount necessary to pay debt service and judgments.

3. After such annual estimates have been prepared, the town board shall annually assess the amount of the estimate of expenditures, less the estimate of revenues as set forth in the estimate so prepared, on the lots and parcels of land against which the expense of the zone was charged, in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom and shall prepare an assessment roll

1 which shall describe each such lot or parcel of land in such manner that
2 the same may be ascertained and identified and shall show the name or
3 names of the reputed owner or owners thereof, and the aggregate amount
4 of the assessment levied upon such lot or parcel of land. The town board
5 shall file such estimates and the assessment roll with the town clerk
6 between the first and the fifteenth days of September in each year.
7 4. The town board may apportion against and charge to the expense of
8 maintaining any zone an allowance for any services rendered by any town
9 officer or employee when such services have been necessary to and occa-
10 sioned by reason of the maintenance of the zone, or the town board may
11 separately compensate any town officer or employee for services neces-
12 sary to or occasioned by reason of the maintenance of the zone and
13 include the amount so paid in the expense of such maintenance.
14 S 9. This act shall take effect on the sixtieth day after it shall
15 have become a law.